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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	MM Docket No. 97-138
Review of the Commission's Rules)	
regarding the main studio and)	RM-8855, RM-8856, RM-
local public inspection files of)	8857, RM-8858, RM-8872
broadcast television and radio stations)	

OPPOSITION TO PETITIONS FOR RECONSIDERATION
OF
OFFICE OF COMMUNICATION, INC. OF THE UNITED CHURCH OF CHRIST,
MEDIA ACCESS PROJECT,
CENTER FOR MEDIA EDUCATION,
AND
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL

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SUMMARY

In their petitions asking the Commission to reconsider its *Main Studio/Public File Order*, several broadcast industry trade associations have overreached. Their petitions misinterpret the Commission's statutory role, acting as if the Commission's mission is only to serve broadcasters and ignoring the Commission's responsibility to serve the public.

These broadcast petitioners seek to preserve the flexibility and benefits granted to broadcasters while seeking to rescind the most important benefits granted to the public. The requests for a one-sided revision to the Commission's order that would erase the public's benefits must not be granted.

Specifically, the Commission must continue to require *all* broadcasters -- not some broadcasters -- to provide public file information via the telephone and the U.S. mail. These new rules provide an important method for citizens to contact broadcasters and are not as burdensome as the petitioners allege.

In addition, the Commission should:

- Issue the revised version of "The Public and Broadcasting" immediately and not delay by seeking comment on this publication as the NAB has suggested.
- Reject the NAB's request to allow broadcasters to refuse to mail public file information outside of their viewing and listening areas.
- Reject calls for a broad-scale limitation on which e-mail boxes should be screened for placement in the public file, and instead clarify that e-mail to an individual station manager's e-mail address or to any publicized station or program e-mail address should be reviewed for inclusion in the public file.

UCC *et al.* have worked with many of the industry parties, and with Commission staff, to develop means of facilitating citizen/licensee dialog while minimizing burdens on licensees. UCC *et al.* regard the Commission's action in this matter as a reasonable effort to strike this balance.

In light of this cooperative effort, it is disappointing that some of the broadcast petitioners have reacted to the Commission's order with arrogant, petty, and unreasonable demands for relief. Certain broadcaster demands would significantly undermine the public's statutorily-guaranteed, and constitutionally-grounded, rights to hold accountable broadcasters licensed to use publicly owned spectrum. These requests cannot be granted.

The Commission's rules with respect to public files are intended to foster the citizen/broadcaster dialogue. This citizen/broadcaster dialogue is needed precisely to avoid direct government regulation and involvement in broadcaster programming decisions. Yet, several petitioners in this proceeding appear to view citizens not as people to be served as efficiently and helpfully as possible, but instead as spies who must be avoided at all costs. This vision of the viewing public as the enemy ought to convince the Commission that its rules requiring improved public access should not be rescinded.

UCC *et al.* do not oppose the vast preponderance of the broadcaster petitioners' requests for clarification and modification.¹ The Commission would be betraying the public, however, if it removed those new obligations designed to accommodate modern and convenient communications between citizens and broadcasters.

¹ Such requests include exempting the political file from the telephone and mail accommodation requirements, removing noncommercial educational stations' donor lists from the public file, and not creating a new requirement to place certain types of waiver applications in public files indefinitely.

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MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL**

Office of Communication, Inc. of the United Church of Christ, Media Access Project, Center for Media Education, and Minority Media and Telecommunications Council ("*UCC et al.*") oppose portions of the Petitions for Reconsideration filed in MM Docket 97-138.²

INTRODUCTION

UCC et al. have worked with many of the industry parties, and with Commission staff, to develop means of facilitating citizen/licensee dialog while minimizing burdens on licensees. *UCC et al.* regard the Commission's action in this matter as a reasonable effort to strike this balance.

It is inevitable that any undertaking of this kind will be imperfect, and the petitions for reconsideration filed by broadcasters have identified several items which can and should be clarified or rectified. *UCC et al.* do not oppose such requests.

In light of this cooperative effort, it is disappointing that some of the broadcast petitioners have

² See *Public Notice*, 63 Fed. Reg. 64087 (Nov. 18, 1998).

reacted to the Commission's Report and Order with arrogant, petty, and unreasonable demands for relief which would significantly undermine the public's statutorily-guaranteed, and constitutionally-grounded rights to hold accountable broadcasters licensed to use publicly owned spectrum. *UCC et al.* must therefore oppose several of the petitions for reconsideration to the extent set forth below.

In particular, *UCC et al.* oppose a number of requests that the Commission modify its decisions insuring citizen access to public file information by mail and telephone, and for maintaining archives of public comments submitted electronically. *UCC et al.* also take strong exception to the NAB's transparently pretextual delaying tactic of asking for notice and comment on the text of the outrageously overdue rewriting of the Commission's plain language guide for public participation, "The Public and Broadcasting."

I. The Commission Should Not Repeal Its Accommodation Rules Requiring Broadcasters to Provide Public File Information via the Telephone and the U.S. Mail.

In its *Main Studio/Public File Order*, the Commission wisely concluded that it would improve citizen access to broadcaster public files information by requiring broadcasters to provide public file information via the telephone and through the mail. *Main Studio and Public File Report and Order*, FCC 98-175 at ¶24 (rel. Aug. 11, 1998) ("*Main Studio/Public File Order*"). This ruling was but one element of a decision the overall impact of which was to ease burdens on the broadcast industry by providing long-sought flexibility in locating their main studios.

Several petitioners, however, appear to believe that any decision facilitating citizen access to broadcasters must be adverse to broadcaster interests, and therefore oppose those portions of the decision. This unjustified vision of the viewing public as the enemy foments mistrust and ought to convince the Commission that its rules requiring improved public access should not be rescinded.

The Commission must reject requests asking the Commission to apply its new accommodation rules only to stations that move their main studios. State Associations Petition at 3-9; NAB Petition at 10-11; Barry Telecommunications, Inc. *et al.* Petition at 6-7. To reverse course on this issue would remove the most important public benefit in the *Main Studio/Public File Order*.

The accommodation provisions of the *Main Studio/Public File Order* grant citizens more meaningful access to broadcasters' public information than have been previously available. The Commission was quite correct in holding that this important improvement will increase broadcasters' "exposure to daily community activities [that will] help stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet [the Commission's] community service requirements." *Main Studio/Public File Order* at ¶2 (*quoting Main Studio and Program Origination Report and Order*, 2 FCC Rcd 3215 at 3218 (1987)).

These petitioners misconstrue the Commission's statutory obligations as a mandate to reduce the expenses of broadcasters without regard to any other factor. Most egregious of all the petitions is that of the Alaska Broadcasting Association *et al.* ("State Associations"). Their allegation that any Commission decision not resulting in a net *decrease* in administrative obligations to any *single* broadcaster violates the Administrative Procedure Act ("APA"), the Paperwork Reduction Act ("PRA"), and the Regulatory Flexibility Act ("RFA") is arrogant and demeaning to citizens and the Commission. State Associations Petition at 3-6. This allegation is a blatant misrepresentation of these laws, and reveals a disappointing assumption that the Commission should reconstitute itself as an agent of the industry and not of the public interest. To the contrary, the Commission is obligated by the Communications Act generally, and section 307(b) specifically, to ensure that broadcasters serve the public and their communities of license.

The Commission's decision is not contrary to the APA, the PRA, or the RFA. The Commission's decision is not arbitrary and capricious. The decision meets its stated goal of "balanc[ing] between ensuring that the public has reasonable access to each station's main studio and public file and minimizing regulatory burdens on licensees." *Main Studio/Public File Order* at ¶5. Moreover, the Commission emphasized that, in seeking comment on whether to further relax the main studio rule, it was not altering the "'bedrock obligation' of each broadcast licensee to serve the needs and interests of its community." *Id.* at ¶4. Neither the PRA nor the RFA requires any administrative agency to reduce burdens it is means that they will not fulfill the obligations of their originating statutes. The PRA and RFA require agencies to ensure that they do not impose unnecessary burdens on members of industry, including small businesses, and the public. The Commission clearly fulfilled its responsibilities under the APA, PRA, and RFA. *See, e.g., id.* at ¶¶9-10; App. A.

The Commission's accommodation requirements are fully consistent with the basis of its decision to relax the main studio rule. In 1987, when the Commission first relaxed the main studio rule, it noted that residents often communicate with broadcasters by telephone or by mail. *See id.* at ¶3. It again relied on that fact in further relaxing the rule in this proceeding. *Id.* at ¶8. Because the Commission relied upon the public's use of different means of communication with broadcasters to justify the relaxation of the main studio rule, it is perfectly consistent to require broadcasters to cooperate with members of the public who seek to communicate with a broadcaster via those means.³

³ Cornerstone Broadcasting notes that some broadcasters were allowed to relocate their main studios pursuant to waivers. Cornerstone Broadcasting Petition at 2-5. These waivers often require the recipient to take additional action to facilitate citizen/broadcaster communications. Cornerstone asks the Commission to confirm that such stations, if they would not require a waiver under the revised main studio rule, no longer must comply with the additional obligations. *Id.* at 2. While UCC *et al.* see no flaw in Cornerstone's petition, UCC *et al.* hope that broadcasters who undertook additional obligations as a condition of receiving a waiver to relocate their main studios will see the

II. Broadcasters Seriously Overstate the Burdens Associated with Fulfilling the Accommodation Requirements.

To read the State Association's petition, one would believe that hordes of citizens will be descending upon broadcasting studios equipped with laptops, clipboards, and legal counsel. State Associations Petition at 5-7. Such speculative claims should be ignored. Broadcasters should, as the Commission suggested, follow the rules as adopted. In the unlikely event that overwhelming armies of citizens tie up all the telephone lines and demand that thousands of pages of copies be mailed, licensees can seek waivers. *See Main Studio/Public File Order* at ¶25.

This approach is particularly valid because broadcasters will likely realize savings as citizens begin to use modern, inexpensive methods of communication, such as the telephone and e-mail, instead of in-person visits. The petitioners ignore the positive aspects of the Commission's rule changes when seeking reconsideration of this decision. The NAB, for example, cites the possibility that a member of the public might actually obtain the information she requires via the telephone without the broadcaster having to mail information to her as an outcome to be avoided. NAB Petition at 4.

The State Associations demonstrate an almost paranoid fear of public communication when they portray members of the public as zealots likely to track broadcaster response times. Their fears that station staffers must become "mind-readers" and prediction that all telephone calls to stations will now become "criminalized" under the Commission's rules are more laughable than real. State Associations Petition at 5, 6-7. One can only speculate as to the typical response times envisioned by the State Associations that would cause them to anticipate such an antagonistic viewer response.

benefits, both for competitive position and in terms of community service, that such obligations confer.

Even if dozens of citizens a month sought to obtain information from a broadcaster's public file, the administrative burden of responding to these requests by phone is not as severe as petitioners claim. While the State Associations portray the tracking as burdensome, UCC *et al.* believe that an 8 ½ x 11 piece of paper containing reference to a request and a staffer's initials indicating completion would be sufficient to track most requests.

The State Associations also state that retaining a list of the items contained in a broadcasters' public file will be an extraordinary burden. *Id.* A list of the items that must be included in a public file is located in the Commission's rules and at paragraph 54 of the Commission's order. Therefore, it appears that, to answer the public's questions via telephone, broadcasters will need to engage in a one-time expenditure to describe the general contents of these items and an extremely small on-going burden to count the number of pages in each item. Such a burden is minimal and fully justified in light of the significant public interest benefits.

Many of the "new" requirements that the State Associations object to include items such as training staff to respond to inquiries from the public via telephone. *Id.* at 4. This "burden" is, hopefully, not a novel task for any competent businessperson. One would assume that marketplace competition would compel broadcasters to retain staff who are able to communicate with members of the public regardless of a Commission requirement to do so.

UCC *et al.* note with irony that the NAB's requested clarification actually seeks more, not less, regulation. *See* NAB Petition at 3-5. The purpose of the citizen/broadcaster dialogue is to *avoid* the need for detailed regulation in favor of reliance on the good faith efforts of broadcasters to maintain contact with their viewers and listeners in their communities of license. Nothing in the Commission's order appears to contemplate a greater burden on broadcasters than the examples provided --

explaining the general contents and length of documents contained in the public file. It appears further exposition on this rule would only complicate compliance, not simplify it.

III. The Commission Should Not Limit the Geographic Area to Which Documents Must be Mailed.

The Commission should decisively reject the NAB's request that broadcasters be allowed to refuse to mail public file information outside of their viewing areas. NAB Petition at 11-12. This unreasonable demand would cripple citizen enforcement of licensee obligations. Having achieved deregulatory measures removing heavy FCC oversight, the NAB cannot now expect to undermine the private sector oversight which has been substituted.

Citizens outside of a broadcaster's service area have many valid reasons to seek information from a distant location. First and most obviously, viewers or listeners living within a community of license may retain counsel located outside of the area. Second, citizens need to compare the performance of broadcasters located outside of their areas with the performance of their own stations. Third, information in a public file is essential to national organizations (including industry trade associations) and to academics collecting nationwide statistics. Nationwide data is critical to facilitate sound policy-making by the Commission and sound advocacy by industry and citizen groups. Collection of this information by the private sector using public file information assists the Commission without increasing the number of direct governmental inquiries addressed to broadcasters.

Nor is this a costly obligation. The cost of postage is identical everywhere in the country. Therefore, no additional burden is placed on a broadcaster that mails information outside of its community of license.

IV. The Commission should Not Create a Broad Exception to the Rule Requiring Broadcasters to Place E-Mail in a Public File.

UCC *et al.* do not oppose some limited clarification and limitation on what e-mail must be retained in a station's public file. A broad-scale limitation to retain e-mail sent to only a few addresses, however, is unacceptable. UCC *et al.* would favor guidance from the Commission clarifying that any appropriate e-mail to an individual member of station management or to any publicized station or program e-mail address should be included in the public file.

The State Associations and the NAB allege that some e-mails that address programming matters will be addressed to individuals at the station and that placement of these letters in the public file might raise privacy issues. State Associations Petition at 9-10; NAB Petition at 5-6. These issues are not confined to e-mail, and thus do not deserve specialized treatment. First, many paper letters addressing programming must be addressed to individual staffers such as station managers or producers. Staff must be instructed to consider whether a letter should be included in a public file when they review their mail and their e-mail.⁴ Second, the Commission's rule allows broadcasters discretion not to place certain letters, and presumably portions of certain letters, in the public file. *See* 47 CFR § 73.1202 (a letter shall be placed in the file "unless . . . the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter."). Thus, if any e-mail or paper letter did include private information, broadcasters should be allowed to remove that information from the letter before placing it in the public file.

To conclude that the possibility that private information might appear in a letter sent to an individual should exempt all such letters from the public file requirement would be an overreaction

⁴ Although UCC *et al.* believe the concerns are overstated, UCC *et al.* do not oppose limiting the staff who must review their personal e-mail for inclusion in the public file to station management.

in the extreme and would completely undermine the rule.

The Commission should not exempt e-mail sent to a program or suggestion box, as the NAB suggests. NAB Petition at 5-6. Presumably, broadcasters create e-mail boxes for their stations and for particular shows so that staff members can read and utilize the information they receive. Thus, it is unclear what additional burden of "reviewing" such e-mail is being placed on broadcasters. Moreover, it is likely that e-mail sent to a generic box regarding a program or a station would be very likely to be a letter that should be placed in the public file under 47 CFR § 73.1202.

Finally, the broadcaster petitioners do not acknowledge that sorting and storing e-mail letters is drastically simpler than sorting and storing paper letters, particularly given the Commission's decision that e-mail may be maintained electronically. For each letter that a broadcaster receives electronically instead of on paper, the burden on a broadcaster decreases.

V. No Further Delay in the Release of "The Public and Broadcasting" Can Be Tolerated.

The NAB asks the Commission to seek public comment on "The Public and Broadcasting" before releasing it. NAB Petition at 12-13. The revision and re-release of The Public and Broadcasting has been delayed for more than 20 years. No further delay can be tolerated. Commission staff is fully capable of accurately updating and releasing this publication, as it does with all public information documents, without notice and comment. This document will summarize the current obligations of broadcasters as they have been adopted pursuant to full public notice and comment.

The rapid issuance of "The Public and Broadcasting" will only simplify compliance with the Commission's new public access requirements. The information contained in this document will assist broadcasters in training their staffs and can easily be mailed to members of the public who telephone

a licensee requesting information on public files. If broadcasters or members of the public note inaccuracies or unclear statements in the Commission's version, they can surely present those suggestions to the Commission at any time.

CONCLUSION

The Commission's *Main Studio/Public File Order* was well-reasoned and successfully granted many cost-savings to the broadcast industry, while also increasing the ability of citizens to communicate with broadcasters. Although many of the petitioners' requests are not unreasonable, the Commission cannot adopt proposals that would completely undermine the most important benefits for the public contained in that order. Broadcasters should remember that communications with their viewers and listeners not only serve their own commercial interests, but are part of the obligation taken on by those individuals holding a license from the FCC. These communications should not be fought by the industry, but rather embraced by it.

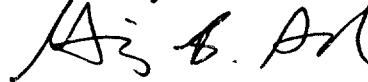
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